

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY
NEEDS TO MODIFY ITS AGREEMENT WITH ITS FOUNDATION
AND IMPROVE MANAGEMENT CONTROLS**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-939

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AND IMPROVE MANAGEMENT CONTROLS

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Acting Auditor General

April 25, 1990

P-939

Honorable Elihu M. Harris, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 2148
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning weaknesses in the agreement between the California Museum of Science and Industry (museum) and the California Museum Foundation of Los Angeles (foundation). Specifically, the agreement does not sufficiently protect the State's interest. Further, the museum has inappropriately contracted with the foundation. Also, the museum's facility use policy allows the museum to waive fees and also gives a portion of fees collected to the foundation. Finally, the museum's parking lot is being used extensively by college students and the public may be discouraged from visiting the museum.

We conducted this audit to comply with Item 1100-001-001 of the "Supplemental Report of the 1989 Budget Act."

Respectfully submitted,

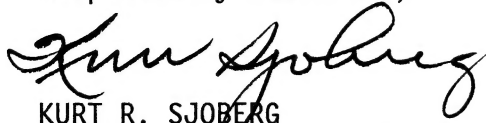

KURT R. SJOBERG
Acting Auditor General

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SUMMARY

RESULTS IN BRIEF

The California Museum of Science and Industry (museum) is an educational, scientific, and technological center created for the primary purpose of stimulating interest in science, industry, and economics. During our review of the museum, we noted the following conditions:

- The written agreement between the museum and the California Museum Foundation of Los Angeles (foundation), organized to support the museum, does not ensure that the museum will have direct access to all of the foundation's assets if the foundation is dissolved;
- Contrary to provisions in Chapter 93, Statutes of 1989, the museum is currently providing substantial financial support, including state funds, to the foundation;
- According to the agreement, the foundation is to exert its best efforts to raise funds to further the purposes of the museum. However, it appears that the foundation is not meeting this provision. While the foundation has done much in the past to support the museum, current planned projects cannot be completed until funds are raised;
- The agreement allows the foundation to contract with entities outside of state government for the operation of gift shops and a restaurant in state facilities. The revenue from the rental of this property goes to the foundation and is not subject to state fiscal controls intended to ensure accountability for funds;
- The museum inappropriately contracted with the foundation to remove, store, and reinstall exhibits and to provide interpretive services. As a result, the State's best interests may not have been

served, and the museum has no assurance that the services performed were obtained at the lowest possible cost;

- The advertisements on commercial billboards located throughout museum grounds are not always in keeping with state and museum requirements. Further, the museum has not charged fair market value for the lease of the state land on which some of the billboards are located;
- The foundation inappropriately received over \$45,000 in lease payments for the use of state property upon which commercial billboards were installed. Because the funds for the lease of the state property, to which the State is entitled, were paid to the foundation, state assets were converted to private monies and were not subject to state fiscal controls;
- The museum's facility use policy allows the museum's executive director to waive either facility rental fees or both rental fees and reimbursable costs for certain individuals or groups. Such waivers may be a violation of the California Constitution;
- The museum policy also allows a portion of the rental fees for the use of museum property to be given to the foundation. Payments under this policy may be a violation of the Penal Code, which prohibits any officer of the State from appropriating public monies to entities without the authority of law;
- The museum has not consistently collected rental revenue or reimbursements for utility and personnel expenses associated with the use of its facilities by other organizations. As a result, the museum is subsidizing their activities; and
- The museum's courtesy parking lot is sometimes used extensively by college students who attend classes at a nearby university. As a result, convenient parking is not always available, and the public may be discouraged from visiting the museum.

BACKGROUND

As required by the Supplemental Report of the Budget Act of 1989, we reviewed the operations of the museum and its relationship with the foundation.

Located in Exposition Park, a 130-acre tract south of central Los Angeles, the museum presents exhibits and conducts programs that focus on the scientific and industrial development of the State. The primary purpose of these exhibits and programs is to create and stimulate interest in science, industry, and economics. The museum's programs also include lectures, seminars, films, science workshops, and teaching institutes led by eminent scientists from throughout the country. State support of the museum for fiscal year 1990-91 is estimated to be over \$8.9 million.

The museum also receives financial support from the foundation, a nonprofit corporation that supports the museum. Founded in 1950 to solicit and provide funds to acquire and maintain exhibits for the museum, the foundation also assists in the establishment and operation of the museum's educational programs. In past years, the foundation has done much to support the museum. For example, in preparation for the 1984 Olympic Games, the foundation spent over \$10 million for two new buildings, new exhibits, and additions to other areas of the museum grounds. In November 1989, the foundation entered into a revised agreement with the museum that defines the relationship between the organizations.

PRINCIPAL FINDINGS

The Agreement Between the Museum and the Foundation Does Not Sufficiently Protect the State's Interests

In November 1989, the museum entered into a revised agreement with the foundation that specifies the rights of each organization and the responsibilities of each to the other. However, this agreement does not ensure that the museum will have direct access to all of the foundation's assets if it is dissolved. Although the agreement specifies that, upon its dissolution, the foundation is to convey all its assets directly to the museum, the foundation's articles of incorporation were amended in 1989 to prevent the museum from receiving certain assets. The revised articles stipulate that all exhibits and rights to concessions be given to the museum but that all remaining assets be given to any nonprofit scientific, educational, or charitable public foundation that supports the museum. Further, the foundation's legal counsel stated that the language in the revised agreement does not necessarily dictate that all of the foundation's assets would go to the museum in the event that the agreement is terminated. Therefore the State's immediate access to all of the foundation's assets could be disputed.

According to the agreement, the foundation is to exert its best efforts to raise funds to further the purposes of the museum. However, it appears that the foundation is not meeting this provision. While the foundation has done much in the past to support the museum, current planned projects cannot be completed until funds are raised. Currently, the museum has plans to develop five new exhibits originally estimated to cost a total of \$10.1 million. We reviewed three of these projects, dating back as far as June 1, 1988, originally requiring an estimated \$7.7 million to complete. We determined that only \$1.2 million has been raised, largely due to the efforts of museum employees.

In addition, while the agreement includes a provision that the museum will not spend state funds to support the general operating costs of the foundation, as required by Chapter 93, Statutes of 1989 (the Budget Act of 1989), the museum has not implemented a policy to ensure compliance with this provision. We estimate that the museum is currently providing over \$113,700 per year in support of the foundation's postage, printing, utility, telephone, and maintenance costs. The museum paid approximately \$78,200 of this amount under its contracts with the foundation.

Finally, the agreement allows the foundation to contract with private businesses for the use of state facilities to operate a restaurant and gift shops. Over \$116,000 in rental payments for these facilities was deposited into the foundation's restricted account for exhibit maintenance during the past fiscal year. Because the foundation receives and controls this revenue, the State's assets are converted to foundation monies and are not subject to the State's direct fiscal controls.

The Museum Does Not Always Follow Proper Contracting and Leasing Procedures

During our review, we noted that the museum does not always adhere to state contracting practices, as required. For example, because the foundation owned the exhibits, the museum named the foundation as a "sole source" contractor for the removal, storage, and reinstallation of exhibits, and awarded it a \$250,000 contract that the foundation subcontracted to have done. Thus, the sole source justification was not present, the competitive bidding requirement was not followed, and there is no assurance that the work was done at the lowest possible price.

The museum has allowed work to begin on contracts without receiving the required approval from the Department of General Services. For example, in July 1989, the museum contracted with a vendor to manage one of its parking lots and allowed work to begin

on this contract before receiving approval from the Department of General Services. This vendor has deducted over \$16,000 in expenses from cash received from parking lot patrons. If the contract is not approved, the contractor may file a lawsuit against the State over payment for services rendered. In addition, unauthorized individuals have direct access to cash that belongs to the museum.

In leasing state property to private advertising firms to erect billboards on the museum grounds, the museum did not seek competitive bids or obtain required approval. Additionally, the advertisements are not always in compliance with state and museum requirements. Further, the museum has not charged fair market rates for the use of the state land for some of the billboards. As a result, we estimate that the museum has not received as much as \$5,600 per year for state land leased to advertising vendors. In addition, the foundation inappropriately received over \$45,000 in lease payments for the use of state property upon which the billboards were installed.

The Museum Does Not Exercise
Sufficient Management Control
Over the Use of State Property

The museum's facility use policy allows the executive director to waive rental fees and reimbursable costs and to forward a portion of the rental fees collected to the foundation, which may be a violation of the California Constitution. As a result, the museum is forfeiting revenue and is giving the foundation state monies that should remain with the museum. Further, the museum has not sought rental fees and reimbursements from nonmuseum entities, despite provisions in the museum's policy that call for such reimbursement, nor does it always collect fees and reimbursements that it does assess. As a result, the museum is subsidizing the rental of state facilities by other organizations.

Finally, we determined that, during weekdays, the museum's main parking lot is between 50 percent and 78 percent filled before the museum opens at 10:00 a.m. and is being used primarily by college students. As a result, convenient parking is not provided for museum patrons, and museum attendance may be discouraged.

CORRECTIVE ACTION

On March 9, 1990, the museum submitted its first invoice to the foundation for reimbursement of costs for postage and supplies from August 1989 through November 1989. Further, on February 3, 1990, during our review, the museum negotiated a new contract with a vendor for two gift shops. The foundation is not a party to the new contract, and all rental payments will be made to the museum. In addition, on March 8, 1990, the museum's executive director exercised the museum's right to terminate its agreement with an advertising vendor and instructed the vendor to remove its billboards from the museum grounds. Finally, at the end of our review, the museum was keeping the courtesy parking lot closed until 9:40 a.m. to give museum visitors a better opportunity to use the lot.

RECOMMENDATIONS

We recommend that the museum take the following actions:

- Modify its agreement with the foundation so that all of the foundation's assets are transferred to the museum in the event of the foundation's dissolution or if the agreement is terminated;
- Also, modify its agreement with the foundation to include a provision that the foundation's articles of incorporation be compatible with the agreement;

- Collect reimbursements as appropriate for the general operating costs of the foundation since the effective date of the agreement;
- Comply with state contracting and leasing requirements, and improve its management controls over its contracts and leases; and
- Implement adequate management controls to ensure that monies are collected for the use of facilities and that adequate parking is available for museum patrons.

AGENCY COMMENTS

The State and Consumer Services Agency, in association with the California Museum of Science and Industry, concurs with the contents and recommendations of this report.

The California Museum Foundation of Los Angeles stated that it disagrees with the contents and conclusions of this report. However, it did not identify its specific concerns.

INTRODUCTION

The California Museum of Science and Industry (museum) is an educational, scientific, and technological center created for the primary purpose of stimulating the interest of Californians in science, industry, and economics. The museum is located in Exposition Park, a 130-acre tract of land owned by the State, just south of central Los Angeles. Parking lots occupy a 26-acre area within Exposition Park. In a number of state-owned and privately owned buildings, the museum houses exhibits and conducts programs on the scientific and industrial development of the State.

The museum currently houses 19 permanent exhibits on science, industry, and economics. In addition, each year the museum presents between 12 and 20 temporary exhibits. The museum also provides lectures, seminars, films, science workshops, and teaching institutes lead by prominent scientists from throughout the country. Admission to the museum is free, and an estimated two million people visit it each year.

The museum was originally created as the Sixth District Agricultural Association. In 1981, responsibility and jurisdiction over the museum was transferred from the Department of Food and Agriculture to the State and Consumer Services Agency. The museum is administered by a nine-member board of directors appointed by the governor. The administrative staff of the museum operates under the

general direction of an executive director, who is appointed by the board of directors. The administrative staff provides personnel, budgeting, planning and clerical services in support of the museum. Currently, the museum has over 120 authorized state employee positions, including the executive director, deputy directors, and over 100 educational and administrative positions. For fiscal year 1990-91, the museum is budgeted to receive over \$8.9 million from the State's General Fund. As a state institution, the museum must adhere to State Administrative Manual requirements as well as to state laws and regulations governing state agencies.

The museum receives financial support from the California Museum Foundation of Los Angeles (foundation). The foundation is a nonprofit corporation established in 1950 under Division 2, Title 1, of the California Corporations Code for the purpose of soliciting and providing funds to acquire and maintain exhibits as well as for assisting in the establishment and operation of the museum's educational activities. A portion of the museum's exhibits and programs are financed by the foundation, which is supported by private contributions.

The foundation is governed by an 80-member board of trustees. Each member of the museum's board is also a member of the foundation's board of trustees. In selecting other board members, the foundation's nominating committee receives resumes from candidates, reviews their credentials, and then recommends either approval or denial to the board

of trustees. Final selection decisions, the result of a majority vote of the board of trustees, are based on the candidates' ability to contribute financially to the foundation and on their community involvement. As a private corporation, the foundation is not subject to State Administrative Manual requirements or to state laws and regulations governing state entities.

In addition to the foundation, several volunteer groups play an important role at the museum. Organized to provide educational and other services to implement the goals of the museum, over 1,100 volunteers support the museum in a variety of ways. For example, they conduct tours of the museum's exhibits, assist with special events, staff the information desk, and raise funds to support the museum. The foundation's policy is that volunteers must be foundation members.

On November 3, 1989, the museum and the foundation entered into a revised three-year agreement that defines the relationship between the organizations. For example, the museum granted the foundation the nonexclusive right to install, operate, manage, and maintain exhibits, gift centers, and refreshment areas in the museum; the museum retains control of the operation and management of the other permanent facilities in Exposition Park. Further, the agreement requires the foundation to exert its best efforts in raising funds to further the purposes of the museum. Either party can terminate the agreement with six months' notice.

SCOPE AND METHODOLOGY

The purpose of this audit was to review the operations and management of the museum and its relationship with the foundation, as required by the Supplemental Report of the Budget Act of 1989. We reviewed all items listed in this report. Specifically, we reviewed the current agreement between the museum and the foundation and interviewed museum and foundation officials who are responsible for administering the museum and its exhibits. We reviewed the foundation's audited financial statements since foundation fiscal year 1981-82. Further, we analyzed the financial records of both the museum and the foundation to determine their financial support of each other for the past two foundation fiscal years. The foundation's fiscal year begins on October 1 and ends on September 30. Additionally, we reviewed the museum's policy for the rental of its facilities. We limited our contract and lease review to contracts between the museum and the foundation and contracts and leases involving the museum's parking facilities or the use of museum property.

We documented and reviewed the foundation's selection policy for its board members and executive committee members. We also reviewed the affirmative action efforts of the foundation and found that women and minorities are employed by the foundation and that no discrimination complaints have been filed with the Department of Fair Employment and Housing regarding the foundation's hiring practices. We

also determined that the agreement between the foundation and the museum requires the foundation to comply with antidiscrimination requirements.

We reviewed the foundation's payments to museum board members and staff and found no evidence of improper payments. We did not review for conflicts of interest between members of the foundation's executive committee and their museum activities except in our review of contracts. We reviewed all current contracts between the foundation and the museum for evidence of conflicts of interest and found none. However, because the foundation is not a state entity, it has no state conflict-of-interest reporting requirements.

To estimate the museum's financial support of the foundation, we randomly selected three months during the foundation's last fiscal year to review. We then determined the museum's costs for the foundation's postage, printing, utilities, and maintenance personnel for the period. We used the costs for these months to estimate the amount of support given the foundation for the past foundation fiscal year. We reviewed museum and foundation accounting records of all cash received for the past two fiscal years to determine where donations came from and who solicited them.

We reviewed all current contracts between the museum and the foundation as well as contracts for the management of the museum's courtesy parking lot and leases of museum property for the placement of advertising billboards. We also reviewed all state laws and

regulations relating to these contracts and leases and determined whether the museum complied with the requirements.

We reviewed a random sample of 57 (10 percent) of the 569 requests for facilities use for the last two fiscal years. We also observed the museum's courtesy parking lot on four separate days to determine the number of vehicles in the lot at various times during the day and to determine the destination of some of the parking lot patrons.

During the course of our audit, we kept museum and foundation officials informed of the results of our review.

AUDIT RESULTS

I

THE AGREEMENT BETWEEN THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY AND THE CALIFORNIA MUSEUM FOUNDATION OF LOS ANGELES DOES NOT SUFFICIENTLY PROTECT THE STATE'S INTERESTS

In November 1989, the California Museum of Science and Industry (museum) entered into an agreement with the California Museum Foundation of Los Angeles (foundation) that defines the relationship between the organizations. While this agreement is an improvement over previous agreements, it does not ensure that the museum will have direct access to the foundation's assets if the foundation is dissolved. The agreement specifies that, upon dissolution, the foundation is to convey its assets directly to the museum, yet on August 11, 1989, before the agreement was signed, the foundation modified its articles of incorporation to suggest that the foundation may not intend the museum to receive certain assets. Further, the foundation's legal counsel stated that the language in the revised agreement does not necessarily dictate that all of the foundation's assets would go to the museum in the event that the agreement is terminated. Therefore, the State's immediate access to all of the foundation's assets could be disputed.

Further, the agreement allows the foundation to contract with entities outside of state government for the operation of gift shops and a restaurant in state facilities. The revenue from the rental of

this property goes to a restricted foundation account and is not subject to state fiscal controls intended to ensure accountability for funds.

Finally, contrary to a requirement of Chapter 93, Statutes of 1989 (the Budget Act of 1989), which took effect in July 1989, the museum continues to give the foundation substantial financial support for operating expenses related to maintenance personnel, utilities, postage, and printing. For the past foundation fiscal year, which ended September 30, 1989, we estimate that museum support of the foundation exceeded \$113,700. Of this \$113,700, the museum paid approximately \$78,200 under its contracts with the foundation.

THE STATE'S IMMEDIATE ACCESS TO THE
FOUNDATION'S ASSETS COULD BE DISPUTED

The Budget Act of 1989 required the museum board and its executive director to exercise the right to terminate the September 1987 revised agreement between the museum and the foundation on or before August 2, 1989. The Budget Act of 1989 also prohibited the museum from entering into a new agreement with the foundation unless that agreement is in the best interests of the State.

On August 2, 1989, the museum terminated its agreement with the foundation, as required. In November 1989, the museum and the foundation entered into a new three-year agreement that specifies the rights of each organization and the responsibilities of each to the other. One provision of this agreement is that all foundation assets

be transferred directly to the museum if the foundation is dissolved or if either party terminates the agreement. This same provision has been in previous agreements dating back to 1982. However, on August 11, 1989, before the parties entered into the new agreement, the foundation modified its articles of incorporation so that when it dissolves, after paying its debts and obligations, only the exhibits and the rights to concessions will be transferred to the museum. The remaining assets will be given to any nonprofit scientific, educational, or charitable foundation that supports the museum.

Based on statements from foundation officials and our review of the minutes of the July 19, 1989 meeting of the foundation's board of trustees, we conclude that the foundation revised the articles of incorporation in response to the termination requirement in the Budget Act of 1989. According to foundation officials, this requirement in the Budget Act was disruptive to the relationship between the foundation and the museum. The minutes indicate that the revised articles would prevent all of the assets of the foundation from being deposited into the State's General Fund upon the foundation's dissolution or from being used for purposes not related to the museum. According to the minutes of the August 2, 1989, meeting of the museum's board of directors, the foundation's president of the board of trustees stated that the foundation was concerned that potential contributors would not contribute if they knew that their donations might go to the State. We note, however, that, in the past, the wording of the articles of incorporation to benefit the State appears not to have been a factor in the foundation's ability to raise funds.

The foundation's legal counsel stated that language in the November 1989 agreement does not necessarily dictate that all of the foundation's assets be given to the museum if the agreement is terminated. Instead, he stated that it could be construed that only the exhibits and agreements with concessionaires would be transferred to the museum and that other assets of the foundation could be held separately for the museum's benefit.

On July 19, 1989, the foundation began taking steps toward dissolution when the board of trustees authorized the president and secretary to prepare the appropriate legal documents for dissolution. However, as of April 10, 1990, the foundation had not filed any of these documents with the Secretary of State. Based on the actions of the foundation in revising its articles of incorporation, statements in the July 19, 1989, meeting of the board of trustees, and the statement by the foundation's legal counsel, we conclude that the foundation is taking the position that language in the November 1989 agreement does not obligate it to transfer all of its assets to the museum upon its dissolution or termination of the agreement. Unless the language in the agreement and the foundation's articles of incorporation is modified to remove all uncertainty and clearly provide that all of the foundation's assets will be transferred to the museum, the disposition of the foundation's assets could be disputed. These documents need to be modified soon to ensure that the State has direct access to the foundation's assets if the foundation is dissolved or if the agreement is terminated. According to our legal counsel, if the foundation chose

not to honor the agreement to transfer all assets, the State would have to consider the foundation's action a breach of contract. Enforcing the provisions of the November 1989 agreement could require litigation.

IMPORTANT MUSEUM PROJECTS LACK FUNDING

A major purpose of the foundation is to solicit and provide funds to support the museum's exhibits and programs. In addition, the agreement requires the foundation to exert its best efforts to raise funds to further the museum's purposes. The foundation has done much in the past to support the museum. For example, in preparation for the 1984 Olympic Games, the foundation spent over \$10 million for museum improvements. Specifically, the foundation helped to fund the addition of two new buildings, refurbished or rebuilt many exhibits, added new exhibits, and made other additions to museum grounds.

In recent years, however, the foundation's fund-raising efforts have not met the needs of the museum. We determined that much of the financial support raised for the development and construction of museum exhibits has come from local, state, and federal governmental agencies and other sources as a result of the fund-raising efforts of museum employees. Regardless of the source of the funds, the foundation reports all contributions that it receives as support and revenue or as deferred revenue on its annual financial statements.

According to the museum's executive director, concepts for new permanent exhibits may originate with the museum or foundation staffs or with potential sponsors or funders of an exhibit. In the first case, funding is secured through the exhibit's inclusion in the foundation's annual goals and priorities. In the second case, the museum, the foundation, and, if appropriate, the sponsor, develop a "letter of understanding" regarding funding requirements. In either case, according to the agreement, the foundation is required to exert its best efforts to raise funds for the exhibits.

Although the museum and the foundation have formally agreed on the funding of several exhibits, the foundation has not provided sufficient resources to complete all of these exhibits. Currently, the museum has plans to develop five new exhibits originally estimated to cost a total of \$10.1 million. We reviewed three of these exhibits, which account for \$7.7 million. As of February 6, 1990, \$1.2 million has been raised for these exhibits. Further, most of these funds were raised through the solicitations of museum employees.

On February 8, 1989, the museum and the foundation formally agreed to develop an exhibit to introduce museum visitors to basic science principles and to demonstrate their applications in everyday life. For this exhibit, the foundation is to attempt to raise the total cost of the fabrication and installation, an estimated \$3.4 million. In addition, if the foundation fails to raise the required funds, all commitments under the agreement will expire. As of

February 6, 1990, the foundation had received \$629,000 for this exhibit; however, almost one-half of this total represents a planning grant from the National Science Foundation that was solicited by a museum employee. According to the museum's acting deputy director, the National Science Foundation could require that the funds be returned if the final exhibit is not developed as scheduled.

Also at risk of not being completed on schedule is the museum's development of an urban environment exhibit, scheduled for completion by December 31, 1991. The purpose of this exhibit is to raise the public's awareness of the scientific and social issues surrounding resource management, including recycling and litter abatement. On June 1, 1988, the museum and the foundation agreed that the foundation would maintain any funds raised for this exhibit in a restricted account for the sole purpose of the exhibit's design and that the foundation would spend the funds at the museum's request. The total cost for this exhibit, including maintenance costs, is estimated to be almost \$3 million. As of February 6, 1990, approximately \$475,000 had been raised for this project: approximately \$145,000 from the state Department of Conservation, \$250,000 from the state Environmental License Plate Fund, \$20,000 from the Los Angeles County Sanitation Districts, \$10,000 from the Metropolitan Water District of Southern California, and \$50,000 from the South Coast Air Quality Management District. These funds were solicited by museum employees.

Finally, on August 16, 1988, the foundation's executive committee to the board approved the development of an AIDS exhibit and agreed to raise the \$1 million estimated to fund the exhibit. The purpose of this exhibit is to further the public's understanding of what AIDS is, how it can be transmitted, and what can be done to prevent its transmission. However, only \$130,000 has been raised for this exhibit, through a contract solicited by a museum employee with the state Department of Health Services' Office of AIDS. According to the museum's acting deputy director, since adequate funding has not been obtained for this exhibit as originally planned, the museum intends to complete a modified version that will not exceed the \$100,000 contract with the State. The contract's requirement for completing this exhibit is May 15, 1990.

We asked the president of the foundation why it is having trouble raising funds to support these three projects. The president did not directly cite foundation efforts on these three projects. However, he did state that the foundation and the museum work together to obtain funds. Further, he stated that, while funding applications are signed by state employees, the initial contacts are often made by the foundation. Nevertheless, it appears that the foundation is not meeting an important provision of the agreement: to exert its best efforts to raise funds to further the museum's purposes. As a result, the completion of exhibits is delayed until the necessary funds are raised, and the museum's programs and purposes may not receive adequate funding.

In addition, the president provided us with a document describing the foundation's plans for ensuring that it meets its fund-raising goals for museum projects. This plan includes increasing foundation membership and establishing weekly working sessions for board members to share information about the fund-raising status of the major projects in development. The president further stated that since the execution of the November 1989 agreement, the museum and the foundation have reinstituted fund-raising efforts and are cooperating in what is believed to be the best interest of the museum.

THE MUSEUM PROVIDES SUBSTANTIAL FINANCIAL
SUPPORT FOR THE FOUNDATION'S OPERATIONS

The Budget Act of 1989 requires that any agreement between the museum and the foundation include a provision that the museum not expend, and the foundation not accept, state funds to support general operating costs of the foundation. Operating costs include general expenses of the foundation such as building maintenance, utilities, telephone service, postage, and printing.

In the recent past, museum support of the foundation has been substantial. We estimate that, before the new agreement was signed in November 1989, the museum's financial support of the foundation's operating costs in foundation fiscal year 1988-89 exceeded \$113,700. Of the estimated \$113,700 paid for foundation operating costs, the museum paid approximately \$78,200 (69 percent) under contracts between the museum and the foundation. These agreements require the museum to

pay maintenance, utility, and telephone costs for the IMAX theater and the foundation's Hall of Economics, which houses its business office. The museum provided one full-time maintenance worker for the foundation's IMAX theater as well as maintenance staff for the foundation's business and IMAX offices. We estimate that the costs associated with the maintenance service were \$39,700. Further, the museum assumed telephone costs for the foundation of approximately \$9,950, utility costs of approximately \$29,900, printing costs of approximately \$13,370, and postage costs of approximately \$20,800.

The museum has partially complied with the 1989 Budget Act requirement by including in the current revised agreement of November 3, 1989, the statement: "The museum shall not expend, and the foundation shall not accept, state funds to support general operating costs of the foundation." Also, in August 1989, the museum board adopted guidelines specifying the costs it should pay for the foundation and other support groups. While we did not evaluate the appropriateness of these guidelines with respect to the 1989 Budget Act requirements, we did note that they will preclude the museum's paying some of the operating costs cited above.

Although the museum has partially complied with the Budget Act requirement, as of the end of our review, it had not implemented procedures to ensure that it does not pay foundation operating costs, and the museum's financial records indicate that the museum continued to pay these operating costs through the end of our fieldwork in

February 1990. According to the museum's executive director, the museum has begun billing the foundation for its operating expenses, and he provided documentation showing that, on March 9, 1990, the museum submitted its first invoice to the foundation for reimbursement of costs for postage and supplies from August 1989 through November 1989. Moreover, the foundation has stated that, if some of its operating costs are being paid by the museum, the foundation will promptly reimburse the museum upon request.

Because the museum has not yet fully complied with the 1989 Budget Act requirement, state funds are inappropriately being used to support the general operating costs of the foundation. These funds should be used to directly support the museum's operations and programs.

THE AGREEMENT BETWEEN THE MUSEUM
AND THE FOUNDATION ALLOWS FUNDS FOR
THE RENTAL OF STATE FACILITIES
TO BE OUTSIDE DIRECT STATE CONTROLS

Before 1987, the museum maintained the right to contract for the operation of the gift shops and the restaurant in its facilities. However, the 1987 agreement between the museum and the foundation transferred these nonexclusive rights to the foundation. This agreement also gives the foundation the right to install, operate, manage, and maintain a gift center and a restaurant in designated locations of the museum. The foundation is allowed to deduct its expenses from the revenue from these contracts, yet the agreement does

not specify which expenses are legitimate. After deducting its expenses, the foundation is to use the remaining revenue for improving the museum and furthering its purpose.

The foundation contracts with two vendors that rent museum facilities to run two gift shops and one restaurant. In fiscal year 1988-89, the foundation collected a total of \$116,000 from these vendors. The restaurant vendor, for example, which has contracted since 1984 with the foundation, has a ten-year contract with three five-year renewal options. It pays the foundation up to six percent of its gross sales annually. For fiscal year 1988-89, this vendor paid approximately \$40,000. In addition, the contract requires the restaurant vendor to construct exhibits dealing with food preparation technology, nutrition, the use of computers, and other forms of high technology in retail management and to make an annual \$30,000 grant to the foundation to maintain the exhibits.

Section 16301 of the California Government Code states that, except as otherwise provided by law, money belonging to the State shall be deposited into the State's General Fund. This would include revenues received for the rental of state property. In 1988, the museum was given an exception to this requirement when the Legislature created the Exposition Park Improvement Fund in the State Treasury. The museum shall deposit into this fund all revenue collected in excess of \$832,765 from the use of museum parking facilities, from the rental

of state facilities, or from any other business activities. This revenue is to remain with the museum and to be used for improving Exposition Park, subject to appropriation by the Legislature.

While the agreement between the museum and the foundation allows the rent for the use of museum facilities to be paid directly to the foundation, these funds are deposited into restricted foundation accounts for exhibit maintenance. The contract is between the foundation and the restaurant vendor; the museum is not a party. Because the foundation is a private corporation, it is not subject to the state laws and regulations that govern state entities. Therefore, the funds deposited into foundation accounts are not subject to direct state fiscal controls.

State fiscal controls included in Section 13403 of the Government Code and in the State Administrative Manual require state agencies to maintain effective controls over state assets and revenues. For example, only authorized individuals have direct access to the cash collected for the use of state property. Further, the budgetary system is designed, in part, to ensure that state funds are used for authorized purposes.

While the agreement allows the foundation to collect rents and deduct its expenses from the rental revenue, the agreement does not give the museum the authority to audit the books of the vendors. As a result, the museum has relinquished the State's ability to ensure that

vendors are accurately accounting for revenue generated by these contracts or that the contractors are forwarding the full amount due to the foundation. While these contracts generate over \$116,000 per year in revenue for exhibit maintenance, there is no assurance that this is all that is owed the State. Further, because the agreement does not specify the expenses that can appropriately be deducted, the museum does not have adequate control over the amount that the foundation can use for its expenses.

By transferring these nonexclusive rights and the associated rental payments to the foundation, the museum avoided depositing the revenue in the State's General Fund, or alternatively, in the Exposition Park Improvement Fund, where it would be subject to state fiscal controls. Thus it is not in the State's best interests for the museum to allow the foundation to contract for the operation of the gift shops and the restaurant.

According to the museum's executive director, the foundation's right to contract for the use of state facilities was included in the agreement because, at the time, the foundation had existing contracts for the operation of both the gift shops and the restaurant. However, if the museum maintained control of contracts for the use of state property, the payments would be retained by the State for the use of the museum.

On February 3, 1990, during the course of our review, the museum signed a new contract with a vendor for the two gift shops. The foundation is not a party in the new contract, and all rental payments will be made to the museum.

CONCLUSION

As currently written, the foundation could dispute that the agreement between the California Museum of Science and Industry and the California Museum Foundation of Los Angeles requires the transfer of all of the foundation's assets to the museum if the foundation is dissolved or the agreement is terminated. Specifically, upon the dissolution of the foundation or termination of the agreement, there is a question as to whether all of the foundation's assets will be given directly to the museum or to another foundation that supports the museum. In the latter case, the State's control would be diminished. In addition, the museum has not fully complied with the 1989 Budget Act requirement that state funds not be used to support the general operating costs of the foundation. Further, the agreement allows the foundation to collect rental fees for the use of museum facilities and to deposit those fees into foundation accounts. As a result, the museum avoided depositing revenue from state property into a fund subject to the State's direct fiscal controls.

RECOMMENDATIONS

To safeguard the California Museum of Science and Industry's immediate access to all of the assets of the California Museum Foundation of Los Angeles, the museum should modify its agreement with the foundation to clearly provide that all of the foundation's assets will be transferred to the museum upon the foundation's dissolution or termination of the agreement and to require that the foundation's articles of incorporation be compatible with the agreement.

To comply with the 1989 Budget Act requirement that state funds not be used to support the general operating costs of the foundation, the museum should take the following actions:

- Implement systems and procedures to identify the operating costs it is paying for the foundation;
- Obtain a legal opinion on whether the museum is contractually obligated to pay the foundation's past and future operating costs under the IMAX theater agreement and the Hall of Economics agreement. This opinion should also advise whether the museum is entitled to seek reimbursement from the foundation for such past operating costs; and

- Charge the foundation, as appropriate, for all operating costs since the effective date of the new agreement.

To increase the museum's control over revenue collected for the use of state facilities, the museum should take the following actions:

- Modify the agreement to eliminate the foundation's right to contract for the use of museum facilities, and retain this right itself;
- Request that the foundation assign its contract interests with the vendor for restaurant services to the museum; and
- Retain all income from the rental of museum property.

II

THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY DOES NOT ALWAYS FOLLOW PROPER CONTRACTING AND LEASING PROCEDURES

We noted several weaknesses in the California Museum of Science and Industry's (museum) contracting practices. For example, the museum named the California Museum Foundation of Los Angeles (foundation) as a "sole source" contractor and awarded it a \$250,000 contract for the removal, storage, and reinstallation of exhibits during an asbestos abatement project. As a sole source contractor, the foundation was not subject to the State's competitive bidding process. Since the foundation contracted with two firms, which, in turn, contracted with four additional firms to do the actual work specified in its contract with the museum, the sole source justification was not present, and the State has no assurance that the work was done at the lowest possible price. The museum also inappropriately contracted with the foundation for employee services that should have been obtained through the civil service system. Further, the museum has allowed work to begin on contracts without receiving the required approval from the Department of General Services. If the contracts are not approved, the State is in danger that contractors may file lawsuits over services provided.

In addition to these contracting weaknesses, the museum has not always obtained the required approval for leasing state property to private advertising firms to erect billboards on the museum grounds,

and the advertisements on these billboards do not always comply with state and museum requirements. Moreover, the museum is not charging fair market rates for the use of the state land for some of the billboards. As a result, we estimate that the museum has lost as much as \$5,600 per year. Finally, the foundation inappropriately received over \$45,000 in lease payments for the use of the state property upon which the billboards stand.

THE MUSEUM INAPPROPRIATELY ENTERED INTO CONTRACTS WITH THE FOUNDATION

The museum has misused the sole source option in contracting with the foundation to remove, store, and reinstall exhibits and has inappropriately contracted with the foundation for interpretive services for the museum. As a result, the State's best interests may not have been served.

Inappropriate Sole Source Contract

State fiscal controls, as included in the California Public Contract Code, Section 10373, and the State Administrative Manual, Section 1235, require state agencies to obtain at least three competitive bids before awarding contracts unless a contract meets specific conditions for exemption from this requirement. Section 10373 exempts contracts from competitive bidding in the following cases: contracts made in an emergency for the immediate preservation of public health, welfare, or safety or to protect state property; contracts that

have been advertised in the California State Contracts Register but for which the agency has received fewer than three bids or proposals; contracts with another state agency or governmental entity; and contracts that meet conditions prescribed by the Department of General Services. These conditions are also included in Section 1236 of the State Administrative Manual, which exempts contracts from competitive bidding requirements if the Department of General Services agrees that there is only one source for the services.

In 1987, the museum identified the foundation as a sole source contractor for the removal, storage, and reinstallation of exhibits during an asbestos abatement project. Additionally, the contract allowed the foundation to subcontract with other firms for the work. After the museum awarded the foundation this \$250,000 contract, the foundation subcontracted with two other firms, which in turn contracted with four additional firms. These six firms actually moved, stored, and reinstalled the exhibits.

Since the foundation was able to subcontract with two other firms, identified by the museum as potential subcontractors and may not have performed any of the work itself, the designation of the foundation as a sole source for the removal, storage, and reinstallation of the exhibits was inappropriate.

According to the museum's executive director, the museum named the foundation as a sole source contractor to remove, store, and

reinstall exhibits because the museum was under a contractual agreement with the foundation to provide space for the exhibits and because the foundation owns the exhibits. However, ownership is not a condition of exemption in either the Public Contract Code or the State Administrative Manual.

The State's competitive bidding requirements are designed to ensure that the State contract with the best qualified vendor at the lowest possible cost. When the museum contracts in a manner that allows it to effectively circumvent competitive bidding requirements, the State's best interests may not be served. Moreover, when state contracts are not competitively bid, all contractors are not afforded the opportunity to obtain the State's business.

Civil Service System Bypassed

Section 19130(c) of the California Government Code requires that all persons who provide services to the State under an employment relationship be retained under an appropriate civil service classification unless exempted by the California Constitution.

The museum has inappropriately contracted with the foundation to provide "explainer" personnel for the museum. Explainers greet the public, answer questions, ensure public safety, demonstrate how the exhibits work, and protect exhibit areas from damage. The museum has considered these services to be consultant services that are

exempt from civil service because they cannot be performed satisfactorily by civil service employees under existing job classifications since explainer civil service classifications have been unavailable. The museum has contracted with the foundation five times since 1985 to provide explainer services for the museum.

Despite the lack of the appropriate civil service classifications, continued contracting between the museum and the foundation for explainer services is not compatible with the requirement in the Government Code, Section 19130(c), to retain employees under an appropriate civil service classification. Further, in September 1989, the Office of Legal Services, the Department of General Services, and the State Personnel Board instructed the museum that, contrary to the museum's exemption justification, it is in the State's best interest to establish a civil service classification for museum explainers and hire them through this system. Moreover, when the State contracts for services outside of the civil service system, the State's best interests may not be served because qualified individuals eligible for civil service status are not considered for employment, and the rights and interests of civil service employees are not given consideration.

Since December 1989, the museum has been in the process of seeking three civil service classifications for the explainers. As of the end of our review, the museum received approval from the Department of Personnel Administration and the State Personnel Board for one

classification. The museum is now in the process of recruiting candidates within the civil service system.

THE MUSEUM ALLOWS WORK TO BEGIN
ON CONTRACTS BEFORE RECEIVING APPROVAL

Section 1209 of the State Administrative Manual requires that, except in emergency cases to protect human life or state property, agencies must submit each contract for services in time for the Department of General Services to approve it before the work begins. In addition, Section 10295 of the Public Contract Code states that contracts are void until they are approved by the Department of General Services. An approved contract ensures that only authorized personnel have access to state assets, including cash received from individuals for the use of state facilities.

In our review of nine contracts, we found that the museum failed to receive the required approval for five of them before allowing work to begin. For example, in July 1989, the museum entered into a \$34,000 contract with a vendor for the management of one of its parking lots during holidays, weekends, and hours when the museum is closed. The vendor collects cash from parking patrons, deducts its costs and expenses, and forwards the balance of the cash to the museum. According to museum records, as of January 31, 1990, the vendor had collected over \$123,000 from museum parking patrons, deducted nearly \$16,000 for its costs and expenses from August 1989 to January 1990, and turned over the net proceeds to the museum without a

valid contract in place. As of the end of our review, this contract still had not been approved.

In another instance, discussed earlier, the museum entered into a contract with the foundation to provide explainer services for the museum. The museum allowed work to begin on this contract in November 1989, before receiving approval from the Department of General Services. As of January 31, 1990, the foundation had billed the museum for over \$40,000 for services performed from November 15, 1989, through January 31, 1990, without an approved contract for these services.

The museum's executive director stated that the contract for operating the courtesy parking lot had been developed and sent to the Department of General Services for approval, and the museum staff had tried to learn the status of the contract's review and approval. On February 9, 1990, during the course of our review, the museum obtained approval for the explainer contract.

Because it allowed work to begin on contracts before receiving approval, the museum exposed the State to potential lawsuits that contractors could file for payment of services if the contracts are not approved. Further, because a contract is not valid without the approval of the Department of General Services, the parking lot contractor has no authority to collect and control cash paid for the use of state facilities.

WEAKNESSES IN LEASING
STATE PROPERTY FOR ADVERTISING

State fiscal controls specified in Section 1391 of the State Administrative Manual and the California Government Code, Section 11005.2, require that state entities solicit competitive bids and receive approval from the Department of General Services for all leases of state property. Additionally, Section 1397 of the State Administrative Manual allows property on state fairgrounds to be leased for the installation of advertising billboards but places restrictions on the advertisements. (According to our legal counsel, as the Sixth District Agricultural Association, the museum can be considered a state fairground.) Specifically, only California agri-business, California tourism, commercial enterprises with headquarters in California, and specific commercial events scheduled for and on the fairgrounds can be advertised. In addition, in 1985, the museum's board of directors adopted a policy to prohibit the advertisement of tobacco or alcohol on museum grounds. Finally, Section 1393 of the State Administrative Manual requires at least fair market rental fees for the lease of state property.

In 1952, the museum entered into a lease with a private advertising firm for the right to install an outdoor advertising billboard on museum property. This contract was amended in 1975 to include the placement of an additional billboard. This vendor paid the State a total of \$2,400 per year in rental fees for the space for the two billboards. In 1982, the museum contracted with another vendor for

the right to install five additional outdoor advertising billboards on museum property for ten years. This second vendor paid the museum a total of \$20,100 per year in rental fees. We determined that the second lease was not approved by the Department of General Services, and we could find no evidence that the museum sought competitive bids for either the amendment to the first lease or for the second lease.

During the course of our review, we observed that the advertisements displayed on several of the billboards violate either state or museum requirements. For example, several billboards displayed advertisements for businesses that are not based in the State, including several automobile companies and electronics firms. Other billboards displayed advertisements for tobacco and alcohol.

In addition, the museum has not charged fair market value for the 1952 lease. While the State received \$1,200 per year for each of the two billboards under this lease, we estimate that the museum is receiving approximately \$4,000 per year for each of the five billboards leased to a vendor in 1982. Assuming a comparable value for all of the space leased, the State has foregone approximately \$5,600 per year for the space leased under the older contract.

According to the museum's executive director, the museum's records do not show why the museum did not seek competitive bids and obtain the required approval for these leases. Because the museum did not seek competitive bids or obtain approval from the Department of

General Services, the State has no assurance that these leases are in its best interest. As a result of the violation of state and museum requirements, state-based businesses are not being promoted on the billboards. Further, by not charging fair market rent for the space for two billboards, the museum has foregone revenue.

On March 8, 1990, during the course of our review, the museum's executive director exercised the museum's right to terminate the older contract by serving the vendor with a thirty-day cancellation notice. The executive director also instructed the vendor to remove its billboards from the museum grounds.

The Foundation Received Lease Payments for State Property

In 1984, the vendor with the 1982 lease proposed to relocate two billboards to more advantageous positions in Exposition Park. The vendor offered to increase its annual lease payments from \$20,100 to \$30,100. This \$10,000 increase represents \$5,000 per billboard. We noted that this vendor pays the museum \$1,675 per month, which amounts to \$20,100 per year; it also sent the foundation a check for \$5,000 in 1984 and checks for \$10,000 or more from 1985 through 1989. According to a vice president of the company, the \$10,000 check in 1989 was for leasing two billboards in Exposition Park. During our review of the vendor's checks to the foundation from 1984 through 1988, we determined that these checks were lease payments for the same two billboards. Our review of foundation records for two of these years indicates that the

foundation placed no restrictions on the use of these funds. Because the lease is for the use of state property, the museum, rather than the foundation, should have received the lease payments.

On March 27, 1990, the museum's executive director instructed the vendor to make the \$10,000 lease payment payable to the museum, not to the foundation, for the remainder of the lease term. The \$10,000 check for 1989 was deposited into a museum account. Nevertheless, from August 1984 through August 1988, the foundation received at least \$45,000 in lease payments that should have gone to the museum. As of the end of our review, the museum had not amended the 1982 agreement to incorporate the relocation of the billboards and the change in lease and advertising payments.

Because the funds for the lease of the state property were paid to the foundation, state assets were converted to private monies, and were not subject to state fiscal controls.

CONCLUSION

The California Museum of Science and Industry did not comply with state competitive bidding requirements for a contract that it awarded to the California Museum Foundation of Los Angeles. As a result, all potential contractors were not afforded the opportunity to compete for the State's business, and the museum has no assurance that the services were

obtained at the lowest possible cost. In addition, because the museum repeatedly contracted with the foundation for explainer services, the museum did not comply with state contracting requirements by considering eligible civil service candidates for the positions. Further, because the museum did not receive approval from the Department of General Services before allowing work to begin on proposed contracts, it has exposed the State to potential litigation, and state monies are controlled by an unauthorized vendor that is not working under an approved contract. We also found no evidence that the museum obtained competitive bids for the lease of museum property to advertising vendors, so it has no assurance that it is receiving the fair market value or that the leases are in the State's best interests. Moreover, contrary to requirements, some of the advertising does not promote state-based business. Finally, the foundation inappropriately received over \$45,000 for the use of state property on which billboards were installed.

RECOMMENDATIONS

To comply with state contracting and leasing requirement and to ensure that the best interests of the State are being protected or furthered, The California Museum of Science and Industry should take the following actions:

- Obtain competitive bids for contracts and leases;
- Ensure that it receives approval before allowing work to begin on contracts and leases; and
- Comply with requirements for advertising on state property, and allow only advertising that complies with state requirements and board policy.

To maximize the revenue it receives for the use of state land by advertising vendors, the museum should seek rental rates that are at least equal to fair market rates.

To ensure that the California Museum Foundation of Los Angeles does not receive lease payments for the use of museum property, the museum should take the following actions:

- Amend the 1982 agreement to incorporate the relocation of the billboards and the change in lease payments; and
- Determine the purpose for which the foundation spent these lease payments and seek recovery if appropriate.

III

THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY DOES NOT EXERCISE SUFFICIENT MANAGEMENT CONTROL OVER THE USE OF STATE FACILITIES AND PARKING

Although the California Museum of Science and Industry (museum) has not received the required approval from the State and Consumer Services Agency and the Department of General Services to rent or permit the use of its facilities, it has developed a facility use policy. We noted several weaknesses in this policy that should be considered before approval is granted. For example, the policy allows the executive director to waive either the rental fees or both the rental fees and the reimbursable costs for certain individuals or groups requesting use of a facility and allows a portion of the rental fees to be given to the California Museum Foundation of Los Angeles (foundation). Moreover, the museum allows the foundation to process and collect rental fees and other costs associated with the use of museum facilities and has failed to collect over \$46,500 in rental fees and other costs itself. By allowing free use of facilities for activities that do not have a statewide public purpose, the museum may be violating the California Constitution. Further, it may be violating the California Penal Code by giving a portion of its rental fees to the foundation. Finally, since the museum's courtesy parking lot is sometimes used extensively by college students who attend classes at a nearby university, the public may be discouraged from visiting the museum.

The Museum's Facility Use Policy
Allows the Museum To Waive Fees and
Give Some of Its Funds to the Foundation

According to the museum's executive director, in 1987, the museum's board of directors adopted a facility use policy as a result of concerns expressed in a 1986 report by the Office of the Auditor General. According to this policy, the museum, as an agency of the State, may allow outside groups, agencies, and individuals to rent or use its buildings and park facilities, provided the use does not conflict with the museum's purpose. The museum has operated under this policy even though it has not yet received the required approval to rent or permit the use of its facilities from both the State and Consumer Services Agency and the Department of General Services. We reviewed a sample of events for which the museum's facilities were rented or used to identify potential weaknesses in the museum's policy.

Section 4001 of the California Food and Agricultural Code states that the museum is to retain and use the funds it receives. In addition, Article XVI, Section 6, of the California Constitution prohibits state entities from making a gift of public monies or anything of value to any person, association, or corporation. Further, Section 424 of the California Penal Code prohibits any officer of the State from appropriating public monies to another person or entity without the authority of law. Public monies include the fees collected for the use of the museum's facilities.

The museum's facility use policy establishes a rental fee schedule for the use of some of its facilities and reimbursement rates for utility and personnel costs. For events held after regular museum hours or on the weekend, the policy requires that the museum always seek reimbursement for its personnel and utility costs. However, the policy also allows the museum's executive director to waive either the rental fees or both the rental fees and reimbursable costs for certain individuals or groups requesting the use of facilities. For example, the executive director can waive rental fees for nonprofit organizations that provide educational programs that are, in the judgment of the executive director, consistent with the museum's programs and exhibits. In addition, rental fees can be waived for persons or groups that have given or are considering giving donations to the museum. Because this policy is so general, we could not evaluate the appropriateness of the waivers allowed by the museum. While a more specific policy may still have allowed for some of the waivers, some events appear to have been unrelated to the museum's programs and exhibits. However, based on the current policy, the executive director could potentially justify waiving fees for nearly any entity that wishes to use the museum's facilities.

We reviewed a random sample of 57 of the 569 events that entities other than the museum or the foundation held on museum property between October 1, 1987, and September 30, 1989. Of these 57 events, 15 clearly were not subject to rental fees. Of the remaining 42 events, we determined that the museum charged rental fees for 3 events and waived rental fees for the remaining 39.

For example, a nonprofit organization requested the use of a facility to hold a luncheon and group meeting on public administration and was not charged any fees. According to the museum's executive director, rental fees are waived for nonprofit organizations when the purpose of the event includes an educational program. However, from museum records, we were unable to conclude that the meeting was related to an educational program consistent with the museum's programs and exhibits. In another case, a sorority requested the use of a facility to host a reception for graduates of a local university and was not charged any fees. The sorority stated in its application that it is a nonprofit organization that serves the public through "educational awareness." However, the museum could provide no evidence that the reception included an educational program.

Further, at least 42 of the 57 events occurred after regular museum hours, and the museum should have charged personnel costs, utility costs, or both. However, the museum obtained reimbursement for utility costs for only one of the events and sought reimbursement for personnel costs totaling \$10,370 for only 15 of the 42 events. Because the museum lacks complete records, we cannot determine the total dollar amount that the museum has waived in rental fees and personnel and utility costs.

We also reviewed all 18 foundation events that were held on museum property during the same two-year period. The museum did not seek reimbursement for utility costs for any of the 14 events that

occurred after regular museum hours, but it did seek reimbursement for \$10,340 in personnel costs.

Also included in the facility use policy is a provision that a percentage of the rental fees for the use of museum property be given to the foundation. Thus, after billing organizations for the use of museum facilities, a portion of the funds is forwarded to the foundation. For example, if an organization rents the museum's aerospace museum for four hours, \$1,000 of the \$2,000 rental fee is to be given to the foundation. Of the 57 requests we reviewed, 3 included rental fee assessments totaling \$3,900: the foundation received \$1,000, the museum kept \$2,500, and it never collected the remaining \$400.

The executive director acknowledged that the museum is not seeking reimbursement for utility costs because of an oversight on the part of museum staff. However, he stated that the museum will seek reimbursement in the future. In addition, while the facility use policy requires that museum personnel staff all events, the executive director stated that some events do not require additional museum personnel. Therefore, no reimbursement is sought for personnel costs. Finally, the museum's executive director's understanding is that the foundation receives a percentage of the fees collected because it has paid for improvements to the state facilities. He added that the foundation had received a portion of the revenue from the use of state facilities before the museum adopted its facility use policy in 1986.

Because the museum waives some rental fees and has not always sought reimbursements for personnel and utility costs associated with the use of state facilities, the State is subsidizing the activities of some organizations. A memorandum from the Department of General Services' Legal Division to the State and Consumer Services Agency states that, unless the activity involved with the use of a facility has a statewide public purpose, the waiver of fees and utilities violates the constitutional prohibition against the gift of public funds. In addition, our legal counsel has stated that these actions may be a violation of the California Constitution. Further, sound public policy requires that state agencies seek rental fees and reimbursements for costs associated with the use of state facilities.

If the museum had not waived these fees but had, instead, actively sought reimbursements, it could have collected and retained additional funds to use for the museum. Also, because the museum forwards a portion of the rental fees collected, although it lacks the authority to do so, it is giving the foundation state monies that should remain with the museum. According to our legal counsel, this may be a violation of Section 424 of the Penal Code, which prohibits any officer of the State from appropriating public monies to another person or entity without the authority of law.

Other Weaknesses in the Museum's Facility Use Policy

Section 13403(a) of the Government Code requires state agencies to maintain administrative and accounting controls to ensure the safeguarding of the State's assets and revenues. The Government Code further requires state agencies to maintain a system of authorization and recordkeeping procedures that provide effective accounting controls over assets, liabilities, revenues, and expenditures. In addition, Article XVI, Section 6, of the California Constitution prohibits state entities from making a gift of public monies to any person, association, or corporation. Furthermore, there should be a direct benefit to the State if the museum gives up controls over revenue received for the use of its facilities. Finally, as stated earlier, the facility use policy provides that the museum can collect fees for the use of facilities and reimbursements for the museum's personnel and utility costs.

Foundation Allowed To Schedule Events and Collect Fees and Costs

Individuals or groups wishing to hold an event at the museum's facilities fill out and submit a request to the museum. After determining that the event is consistent with the museum's purpose, the museum reviews the availability of the facility, determines the charges to be assessed, and then notifies the organization of the cost to use

the facilities. During our review, we noted that the foundation also processes requests and determines and collects rental fees and reimbursable utility and personnel costs. In addition, the foundation charges an administrative fee for scheduling events. After the foundation bills the user and receives the fees and reimbursements from an organization, it deducts its fees and reimbursements and forwards the remainder to the museum. The foundation is required to submit all requests to the museum for review and approval.

According to the museum's records on the use of its facilities for events that were held between October 1, 1987, and September 30, 1989, 556 events were held on museum property, including banquets, film productions, teacher seminars, and governmental events. These events were scheduled through either the museum or the foundation. In our review of foundation records, we identified an additional 13 events held on museum property that were scheduled through the foundation's office. For example, a health plan group submitted a request to the foundation to use the museum's aerospace museum and the foundation's IMAX theater for an after-hours reception. The foundation assessed a rental fee of \$2,000 and sought reimbursement of \$658 for personnel, management, and processing fees. The foundation did not seek reimbursement for utility costs even though the event was held after museum hours. We reviewed the museum's files and determined that the museum has no record of these 13 events and that there is no evidence of museum approval.

Fees and Other Costs Not
Collected by the Museum

Although the museum sought reimbursement for personnel costs for 15 of 42 events held by entities other than the museum or the foundation, as discussed earlier, it has not collected over \$4,400 of the \$10,370 in personnel costs related to 6 of these 15 events. Moreover, the museum's accounts receivable records show only \$300 of the \$4,400 in outstanding accounts. The amount has been outstanding since 1987, and there is no evidence that the museum has attempted collection. The accounts receivable review also revealed that the museum has not attempted to collect approximately \$38,000 of the accounts receivable balance at December 31, 1989, that is related to the use of facilities between 1984 and 1988.

In addition, the museum's records for the 18 foundation events held in museum facilities show that the museum sought reimbursement for \$10,340 in personnel costs but has not collected approximately \$4,300. Further, the museum's accounting records do not show the \$4,300 as an outstanding balance.

By inappropriately allowing the foundation to collect rental fees and reimbursable costs associated with the use of museum facilities, the museum has diminished its control over state assets. Further, because the museum does not ensure that the foundation notify it of all facility use, the museum has no assurance that the foundation is collecting and forwarding all rental fees and reimbursements.

Finally, because the museum has not always collected rental fees and reimbursements for personnel and utility costs associated with the use of state facilities by other organizations, the State is subsidizing the activities of these organizations.

According to the museum's executive director, the museum is now creating and implementing procedures to ensure that all monies due to the museum are accounted for and subsequently collected.

The Museum's Courtesy Parking Lot Is Not Properly Used

Section 4106(b) of the California Food and Agricultural Code states that the museum must operate its parking facilities in a manner that preserves and protects the interests of the museum.

The museum operates a courtesy parking lot in Exposition Park, the purpose of which is to provide convenient, inexpensive parking for museum patrons. This lot is located close to museum buildings and will accommodate over 300 vehicles. Cost for parking in this lot is one dollar, regardless of the length of stay. To enter the lot, lot users must deposit the exact change or a one dollar bill into a mechanical fee acceptor, which automatically raises a gate. The mechanical fee acceptor will also accept museum parking passes. For the period that we observed, most lot users (71 percent) paid cash for use of the courtesy parking facilities. In calendar year 1989, the museum realized over \$70,000 in cash receipts from weekday parking in the

courtesy lot. The museum contracts with a private operator to run the courtesy parking lot on weekends, holidays, and during summer months.

Contrary to state requirements, the courtesy parking lot is not providing convenient parking for museum patrons. On four weekdays, we observed the lot being used extensively by college students attending a nearby university. We observed these students proceeding directly from their vehicles across museum grounds to the university campus, without entering any of the museum's buildings. On several occasions, we noted cars arriving at the parking lot as early as 8:00 a.m., two hours before the museum opened. The lot was usually between 50 percent and 78 percent filled before the museum's 10:00 a.m. opening.

There are two main reasons why the courtesy parking lot is being used by college students instead of museum patrons. First, the parking fee for this lot is lower than that for other lots in the area. For example, the adjacent university charges its students a daily rate of four dollars to park in its comparable parking lots. In addition, we observed that the daily rate for other parking lots in the area is from two to three dollars.

Students also use the museum's courtesy parking lot because they arrive significantly earlier than the museum's opening and occupy the majority of spaces before museum visitors arrive. Until recently, the museum did not have controls in place to ensure that more of the

lot is available to museum patrons. However, at the end of our review, the museum began keeping the lot closed to cash-paying patrons until 9:40 a.m. to give museum visitors a better opportunity to use the lot.

The museum's executive director stated that sufficient parking is generally available during weekdays. The more serious problem, he stated, occurs on the weekends, when the museum has the most visitors. While we did not observe the parking lot on the weekends, we do not agree that ample parking is available on weekdays. On two days, the lot was full as early as 11:00 a.m. On one occasion, we observed elderly people and parents with preschool children being denied access to the lot because it was full. These people stated that they were museum visitors.

Full parking lots can force patrons to walk greater distances from their cars to the museum and can cause visitors to miss scheduled events, such as IMAX theater showings. Further, an experience with inconvenient parking may discourage a museum visitor from returning, thereby diminishing the museum's ability to fulfill its purpose.

Freeing up courtesy parking lot spaces by raising the parking rate for the general public to the level of nearby lots and ensuring low-cost parking for museum visitors may encourage attendance while simultaneously increasing revenues to the museum's park improvement fund.

CONCLUSION

Although the California Museum of Science and Industry has not yet received the required approval to rent or allow the use of its facilities, it has developed a facility use policy. We noted several weaknesses in this policy that the State and Consumer Services Agency and the Department of General Services should be aware of before granting approval. For example, the policy is so general that it allows the museum's executive director to inappropriately waive some rental fees as well as some reimbursements of utility and personnel costs. In addition, the policy allows a portion of the rental fees to be given to the California Museum Foundation of Los Angeles. Because the museum does not always seek these fees and reimbursements, it is subsidizing the activities of the organizations that use its facilities, and it is not collecting revenue that could be retained and used by the museum. In addition, the museum's courtesy parking lot is not being properly used. As a result, convenient parking is not always available for museum patrons.

RECOMMENDATIONS

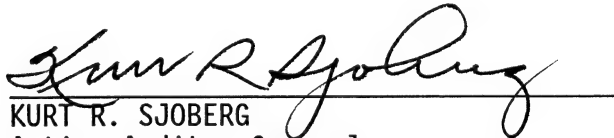
To improve its management of facilities and parking, the California Museum of Science and Industry should take the following actions:

- Seek and obtain approval for renting its facilities from both the State and Consumer Services Agency and the Department of General Services;
- Stop waiving rental fees and reimbursable costs unless the facility is being used for a statewide public purpose. Further, the museum should revise its facility use policy to ensure that inappropriate waivers are not granted;
- Implement procedures to ensure that it collects all fees and reimbursements associated with the use of its facilities; thereby increasing its funds and stop subsidizing the activities of other organizations. Further, the museum should collect all revenues and reimbursements due or seek relief of accountability;
- Stop forwarding a percentage of facility use fees to the California Museum Foundation of Los Angeles, and retain all fees collected for museum use;
- Retain all responsibility for renting its facilities and collecting the related fees and reimbursements; and

- Consider various controls to ensure that the courtesy parking lot is being used by museum patrons and that the rates charged the general public are comparable to rates for nearby lots. For example, the museum could increase the amount it charges the general public to an amount equal to or greater than that charged by other lots in the area and validate the parking receipts of museum patrons to ensure low-cost parking for these patrons.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


KURT R. SJOBERG
Acting Auditor General

Date: April 23, 1990

Staff: Samuel D. Cochran, Audit Manager
Darcy Anderson
Raul Bernie Orozco
Jeffery J. Stevens, CPA
Duane E. Butler
Theresa Young

Memorandum

To: Kurt R. Sjoberg
Acting Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Date: April 18, 1990

From: Office of the Secretary
(916) 323-9493
ATSS 473-9493

Subject:

RESPONSE TO AUDITOR GENERAL REPORT P-939

Thank you for the opportunity to respond to Auditor General Report P-939 entitled "The California Museum of Science and Industry Needs to Modify Its Agreement With the Foundation and Improve Management Controls." The following response has been prepared by the California Museum of Science and Industry and reviewed by the State and Consumer Services Agency.

We have not included responses on behalf of the California Museum Foundation (CMF) because we understand that they have been provided the opportunity to respond directly to the audit.

I THE AGREEMENT BETWEEN THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY AND THE CALIFORNIA MUSEUM FOUNDATION OF LOS ANGELES DOES NOT SUFFICIENTLY PROTECT THE STATE'S INTERESTS

We share the concerns expressed in the audit regarding the agreement between the California Museum of Science and Industry (CMSI) and the CMF. CMSI will attempt to renegotiate its agreement with the Foundation to comply with the audit recommendations by taking the following actions:

- 1) CMSI will request inclusion of a provision in the agreement that the Foundation's articles of incorporation be compatible with the agreement.
- 2) The Foundation will be invoiced and reimbursement will be collected for general operating costs paid by the Museum in support of the Foundation. As noted in the Audit Report, CMSI has recently invoiced CMF for general operating costs incurred from August through November 1989 and will continue to invoice such costs incurred after that time.

- 3) The agreement will be modified to eliminate the Foundation's right to contract for use of Museum facilities for revenue producing purposes.
- 4) The Museum will attempt to negotiate the assignment of the existing McDonald's contract with the Foundation to the Museum.
- 5) The Museum will retain all future income from rental of Museum property.

Both we and the Foundation share the concerns expressed in the audit regarding the amount of funds recently raised in support of Museum exhibits and education programs. We will continue to work with the Foundation to improve their fund raising capabilities and efforts in support of the Museum's programs. We will include information on the status of fund raising in our subsequent reports regarding our progress in implementing the recommendations contained in the audit.

II THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY DOES NOT ALWAYS FOLLOW PROPER CONTRACTING AND LEASING PROCEDURES.

We agree with the audit recommendation that contracts should be in place prior to beginning work on any State contract. We will begin work earlier on future contracts to ensure that they receive approval by the Department of General Services prior to starting work. Both of the contracts for which work began prior to such approval were for essential functions providing protection to Museum property and visitors (explainers) or were revenue producing contracts which would have resulted in loss of revenue to the state if work did not proceed (parking).

With regard to the contract for the removal, storage and reinstallation of exhibits during the asbestos abatement project, the Museum had contracts with the Foundation committing the exhibit space for a five year period. The Foundation had contracts with exhibit sponsors providing for exhibits to be displayed in the Museum for this five year period. The contract with the Foundation to remove, store and reinstall the exhibits insulated the Museum and State from any claims from CMF or exhibit sponsors relating to the loss or damage to any of those exhibits during the asbestos abatement project. In addition, the contract with the Foundation provided for more rapid removal of the exhibits. As this was an urgent asbestos abatement project, any delays would have subjected the public and Museum employees to additional health hazards associated with the asbestos condition.*

Finally, the contract with CMF received all required sole-source and legal approvals required by state law. The Museum will endeavor to provide improved sole-source information to the Department of General Services in the future.

With respect to the explainer contract discussed in the audit, the Museum has been working with the Department of Personnel Administration, the State Personnel Board, the Department of Finance and the State and Consumer Services Agency for over a year to create new civil service classifications and positions for explainers. Explainers will be appointed in civil service positions in April 1990, as soon as the civil service examination process is completed.

*The Office of the Auditor General's Comment: In the museum's sole source justification to the Department of General Services, the museum did not cite an emergency situation as described here. As stated on page 26 of the report, a true emergency situation could be grounds for a sole source contract.

The Museum intends to terminate or renegotiate and amend the existing billboard contracts as recommended in the report. In addition, we will also review the purpose for which the Foundation expended funds received from Gannett and determine if recovery is appropriate.

III THE CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY DOES NOT EXERCISE SUFFICIENT MANAGEMENT CONTROL OVER THE USE OF STATE FACILITIES AND PARKING

We concur with the audit recommendation regarding the use of Museum facilities. As pointed out in the audit, prior to a 1986 Auditor General audit, the Museum had no facility use policy and was receiving no revenue from facility use. As a result of concerns noted in the previous audit, the Museum developed a facility use policy in 1987. The policy was reviewed at the time by the Department of General Services' Office of Insurance and Risk Management and Office of Legal Services, as well as the State and Consumer Services Agency and the California Film Commission. All of their suggestions were included in the policy prior to its adoption by the Museum Board of Directors.

The facility use policy will again be reviewed and revised to reflect both the concerns identified in the audit and our experiences resulting from two years of implementation. The policy will then be submitted to the State and Consumer Services Agency and the Department of General Services for approval. We recognize that administration of the policy also needs improvement. We have determined that the need for staff support is the principal reason for the administrative concerns identified. Accordingly, we are reviewing options regarding assignment of existing personnel or creation of new positions to manage and supervise facility use.

Finally, we would like to point out that the Museum has made significant progress in the last three years in the administration of its facility use. Last fiscal year (1988-89), the Museum collected \$62,560 for facility use compared to zero dollars in 1986. We would also like to point out that the waiver of fees identified in the audit has predominately been associated with facility use by other governmental agencies and events related to Museum exhibits and programs.

We will revise the facility use policy to retain all responsibility for scheduling and rental of state facilities. We will cease forwarding a percentage of facility use fees to the Foundation, except for the fees associated with facilities owned by the Foundation i.e., IMAX, Mark Taper Hall of Finance and Economics.

With respect to parking operations, we are considering new procedures for operation of the Museum Parking lot. As indicated in the audit, the Museum currently contracts for manual operation of the parking lot on weekends, holidays and during the busy summer months. This has provided for effective operation of the parking lot and services to Museum patrons during the busiest times. During the past several months, Museum attendance has been increasing on weekdays, resulting in the shortage of parking identified in the audit. As a result the Museum now closes the lot to paying customers until 9:40 AM on weekday mornings. This has temporarily helped improve the parking availability for Museum visitors. We are currently reviewing other options for operation of the parking lot.

Thank you once again for this opportunity to respond to your report. Please call me at 322-2285 if you have any questions or need any additional information.

A handwritten signature in black ink, reading "Porter L. Meroney". The signature is written in a cursive style with a large, sweeping "P" and "M".

PORTER L. MERONEY
Undersecretary

PLM:ejp

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California Museum Foundation

A non-profit corporation affiliated with the California Museum of Science and Industry



Come Touch
Tomorrow

Joseph T. Forgatch
Acting Executive Vice President

April 17, 1990

Kurt R. Sjoberg
Acting Auditor General
660 J Street, Suite 300
Sacramento, California 95814

Re: Museum of Science and Industry

Dear Mr. Sjoberg:

Thank you for sending us a copy of the portions of the April 1990 draft of "The California Museum of Science and Industry Needs to Modify its Agreement with its Foundation and Improve Management Controls."

Although the California Museum Foundation finds numerous inaccuracies and is in substantial disagreement with the contents and conclusions of the portions of the draft report we received, we believe that the April 18, 1990 deadline gives us insufficient time to respond properly in writing.*

Please be assured that we will respond in writing, and fully, to the report when we have received a copy of the final version.

Very truly yours,

Marvin L. Hohen
President, Board of Trustees

MLH:kn

*The Office of the Auditor General's comments on this statement are found on the following page.

700 State Drive, Los Angeles, CA 90037
(213) 744-2533

**THE OFFICE OF THE AUDITOR GENERAL'S
COMMENTS ON THE STATEMENT BY
THE CALIFORNIA MUSEUM FOUNDATION OF LOS ANGELES**

Our established policy allows agencies five working days to respond to our reports. We gave the California Museum Foundation of Los Angeles the same amount of time to review and respond to the draft report as we gave the State and Consumer Services Agency. Both organizations received copies of the draft report on April 12, 1990. The State and Consumer Services Agency, in conjunction with the California Museum of Science and Industry, was able to respond by April 18, 1990, as requested.

In addition, we had three in-depth meetings with the foundation during which we discussed the draft report's contents. On March 8, 1990, we met with the foundation's acting executive vice president. On March 15, 1990, we again met with the acting executive vice president and the president of the foundation's board of trustees. Finally, on April 16, 1990, we met with these two officials again and with the foundation's legal counsel. In each of these meetings, we solicited the foundation's comments and attempted to modify the draft report where our standards for auditing and reporting permitted.

If the foundation provides us with specific information regarding further concerns about the report, we will respond to those concerns.

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps